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Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Australia*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Australia, which took place from 28 November to 9 December 2016, at the invitation of the Government.

In the report, the Special Rapporteur addresses the legal and institutional framework to combat racism and the different policies and initiatives undertaken against racism and xenophobia by the Government, national human rights institutions and civil society.

The Special Rapporteur analyses the main challenges the country has been facing in the fight against racism, racial discrimination, xenophobia and related intolerance, including issues related to the situation of indigenous peoples (Aboriginal and Torres Strait Islander peoples), expressions of racism and xenophobia in the public sphere and political debates on how to balance freedom of expression and protection against hate speech and discrimination.

The report concludes with recommendations to all relevant stakeholders.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his visit to Australia*

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* Circulated in the language of submission only

I. Introduction

1. At the invitation of the Government, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited Australia from 28 November to 5 December 2016, following up on a previous visit made by his predecessor in 2001 (see E/CN.4/2002/24/Add.1).

2. The Special Rapporteur travelled to Canberra, Australian Capital Territory, and to the cities of: Melbourne, Victoria; Sydney, New South Wales; and Alice Springs, Northern Territory. He also visited the Ntaria community in Hermannsburg, Northern Territory. He met with representatives of the federal, state and territorial governments, the federal and state legislative and judicial branches, and the security forces. He is honoured to have met the Assistant Minister for Social Services and Multicultural Affairs of Australia, the Minister for Multicultural Affairs and the Minister for Aboriginal Affairs of Victoria, the Minister for Multiculturalism of New South Wales and the Minister for Territory Families of the Northern Territory.

3. In addition, the Special Rapporteur met with the President and Commissioners of the Australian Human Rights Commission, representatives of the human rights commissions of Victoria and New South Wales, United Nations agencies and non-governmental organizations, community members and other groups and individuals working in the field of racism, indigenous community leaders, migrant workers, asylum seekers and refugees.

4. The Special Rapporteur wishes to express his sincere gratitude to the federal Government, in particular the Department of Social Services for its excellent cooperation and coordination in conducting the visit. He is also grateful to the different state and territorial agencies for their cooperation. He is indebted to his interlocutors from civil society and community organizations for the excellent cooperation they extended to him throughout the visit. He hopes his conclusions and recommendations will contribute to finding concrete and effective ways and means of addressing the challenges raised in the present report.

II. Background

5. The continent has been inhabited since prehistoric times, when people from South-East Asia arrived at least 40,000 years before the first Europeans landed in the seventeenth century. In 1770, James Cook took possession of the east coast in the name of Great Britain under the doctrine of *terra nullius*. Several colonial settlements were created — some of convicts, such as New South Wales, and some of free persons, such as Victoria. The colonization process found resistance among indigenous peoples when their lands were occupied; many were moved forcibly to mission stations to assimilate them to colonial beliefs and use them as cheap labour.

6. Australia was formally recognized as an independent Commonwealth in 1901 and granted responsible government by the colonial power, although indigenous peoples, together with non-European settlers, were denied citizenship and the right to vote and to take up military duties. The Immigration Restriction Act 1901 was the first act passed by the federal Parliament. It prohibited immigration of non-Europeans to Australia and formed the basis for the "White Australia" immigration policy, which prevailed until the 1960s. However, in the period after the Second World War more than 450,000 immigrants arrived, many from non-English-speaking countries, such as those in southern Europe, the Middle East and Latin America. At that time, the assimilation of new migrants was a priority, as they were expected to adopt the Australian way of life and learn English quickly. Few services were available at that time, apart from lessons in basic English.

7. In 1949, indigenous persons were given the right to enrol and vote in federal elections provided they were entitled to enrol for state elections or had served in the Australian Defence Force. In the 1960s, a new policy of integration, rather than assimilation, was promoted for migrants, as the country became more diverse, and ethnic organizations were seen as playing a role in that process. In 1962, the Commonwealth

Electoral Act 1918 was amended to allow all indigenous Australians the right to vote in federal elections, thus extending the franchise to Western Australia, Queensland and the Northern Territory. In 1975, the International Convention on the Elimination of All Forms of Racial Discrimination entered into force in Australia. Also in 1975, the Racial Discrimination Act was passed, prohibiting discrimination on the grounds of race, colour, descent or ethnic origin.

8. In 1992, the High Court, in the Mabo decision, overturned the concept of *terra nullius* and established that native title could exist over particular kinds of land — unalienated Crown land, national parks and reserves. The Council for Aboriginal Reconciliation was set up by the federal Government to foster better understanding between indigenous peoples and the wider Australian community. In 1995, the Racial Hatred Act was passed, with the aim of ensuring that people of all backgrounds could live free from racial vilification, intimidation and harassment.

9. In 2009, Australia became a supporter of the United Nations Declaration on the Rights of Indigenous Peoples, which it had initially voted against. In 2013, with near unanimous support, Parliament passed the Aboriginal and Torres Strait Islander Peoples Recognition Act. The Act includes a statement of recognition of the unique and special place of Aboriginal and Torres Strait Islander peoples, which reflects to a great extent the wording suggested by the Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples. The Act contained a two-year sunset clause. In 2015, it was amended by the Aboriginal and Torres Strait Islander Peoples Recognition (Sunset Extension) Act to extend it until 2018.

III. Legal framework for combating racism

A. International human rights instruments and mechanisms

10. Australia is a State party to the major international human rights instruments: International Covenant on Civil and Political Rights and its Second Optional Protocol, aiming at the abolition of the death penalty; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Rights of the Child and its Optional Protocols on the involvement of children in armed conflict, and on the sale of children, child prostitution and child pornography; Convention on the Rights of Persons with Disabilities and its Optional Protocol; Convention on the Prevention and Punishment of the Crime of Genocide; and Rome Statute of the International Criminal Court. However, it has not signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance. Australia is also a party to a number of conventions of the International Labour Organization (ILO): namely, 58 conventions and one protocol, including the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). However, it is not a party to the Indigenous and Tribal Peoples Convention, 1989 (No. 69).

11. Australia has made reservations and interpretative declarations with regard to the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child. Australia has made reservations to: articles 10 (2) and (3), 14 (6) and 20 of the International Covenant on Civil and Political Rights; article 4 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination; article 37 (c) of the Convention on the Rights of the Child; and articles 11 (1) (b) and (c) and (2) (b) of the Convention on the Elimination of All Forms of Discrimination against Women. Australia has made interpretative declarations in relation to articles 12, 14 and 18 of the Convention on the Rights of Persons with Disabilities and article 3 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

With regard to the International Convention on the Elimination of All Forms of Racial Discrimination, Australia made a reservation in connection with article 4:

> The Government of Australia … declares that Australia is not at present in a position specifically to treat as offences all the matters covered by article 4 (a) of the Convention. Acts of the kind there mentioned are punishable only to the extent provided by the existing criminal law dealing with such matters as the maintenance of public order, public mischief, assault, riot, criminal libel, conspiracy and attempts. It is the intention of the Australian Government, at the first suitable moment, to seek from Parliament legislation specifically implementing the terms of article 4 (a).[1]

12. In 2015, Australia submitted its candidacy for membership of the Human Rights Council for the term between 2018 and 2020, for which elections will be held in 2017. Australia was reviewed under the universal periodic review for the second time in November 2016, during which the issues of indigenous peoples, asylum laws and refugee policies came under scrutiny (A/HRC/31/14). Australia issued a standing invitation to all special procedure mandate holders of the Human Rights Council on 7 August 2008.

13. The visit of the Special Rapporteur follows the one carried out by his predecessor in 2001. His predecessor noted in the report drawn up after his visit that racism and racial discrimination continued to affect indigenous peoples (Aboriginal and Torres Strait Islander peoples), particularly through a restriction on land rights, differences in educational attainment, access to employment, and health and housing conditions. Certain entities alleged that, according to the data, the measures and programmes designed to remedy those phenomena were insufficient and additional spending was required to redress the situation. The Special Rapporteur was particularly concerned by the situation of Aboriginal women revealed by a survey by the Australian Bureau of Statistics detailing the health disadvantages Aboriginal women faced. The Special Rapporteur also highlighted the issue of extinguishment of native land titles in Western Australia. Since August 1999, Western Australia had passed legislation confirming extinguishment on further titles and amendments that had led to the extinguishment of a further 1,300 of these grants.

14. The previous Special Rapporteur was concerned about the high proportion of indigenous peoples in the criminal justice system and the discriminatory nature of the mandatory sentencing laws in the Northern Territory and Western Australia. He mentioned the previous policy in Australia of removing indigenous children from their families, allegedly out of concern for their well-being, which had resulted in an entire generation being deprived of their cultural values and norms (the "stolen generation").

15. The previous Special Rapporteur finally discussed the different manifestations of racial discrimination affecting other communities. He noted that there were occasional manifestations of anti-Semitism as a result of the repercussions from Middle Eastern conflicts within Australian society. Australians of Arab origin expressed concern about the persistence of stereotypes, which sometimes led to racist acts and discriminatory treatment. He was informed and expressed concern about an ongoing campaign against refugees and migrants orchestrated by the media and sometimes backed by certain members of the federal Government. Migrants were accused of creating unemployment or invading Australia.

B. Legislation prohibiting racism, racial discrimination, xenophobia and related intolerance

16. The Constitution of Australia does not contain a bill of rights or a charter of fundamental freedoms, it provides no protection against racial discrimination and Parliament is capable of suspending existing statutory protection. The Constitution currently ignores the presence of indigenous peoples (Aboriginal and Torres Strait Islander

[1] See https://treaties.un.org/Pages/ViewDetails.aspx?src=treaty&mtdsg_no=iv-2&chapter=4&lang=en#EndDec.

peoples) prior to European settlement, since when it was drafted they were excluded from the discussions on the creation of a new nation on their ancestral lands and waters.[2]

17. Protection against racism and racial discrimination is provided for in several federal laws and by-laws adopted by individual states and territories. The most important in this respect is the Racial Discrimination Act 1975, adopted pursuant to the International Convention on the Elimination of All Forms of Racial Discrimination. All forms of racial discrimination at the federal level and in the various states and territories are prohibited in section 9: "It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life." The prohibition of racial discrimination covers various fields, including access to public places and transport, the provision of goods and services, the sale and occupation of land or the occupation of any residential or commercial plot or premises, membership of trade unions, employment and advertising. The law guarantees equality before the law. The Act was amended in 1995 through the entry into force of the Racial Hatred Act 1995, which incorporated new provisions for the prohibition of unlawful actions performed in public, comprising offensive, insulting, humiliating or intimidating behaviour based on race, colour or national or ethnic origin.

18. One of the specific characteristics of the Racial Discrimination Act 1975 is that it does not require proof of discriminatory intent or motive for an act to be characterized as unlawful, as is stated in section 18C of the Act, which was added in 1995 with the passage of the Racial Hatred Act:

> "(1) It is unlawful for a person to do an act, otherwise than in private, if:
>
> (a) The act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and
>
> (b) The act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group."

It is stated in section 18D of the Act that section 18C does not render unlawful anything said or done reasonably and in good faith for academic, artistic or scientific purpose or any other genuine purpose in the public interest, or in reporting on any such conduct.

19. In addition to federal legislation, all states and territories have laws that make both direct and indirect racial discrimination unlawful. However, there is an important difference between the definition of direct discrimination found in the Racial Discrimination Act 1975 and that found in the laws of states and territories, which do not refer to preferences and distinctions based on race or to article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination in relation to direct discrimination. Under such laws, direct discrimination occurs when a person is treated less favourably than another person of a different race.

20. In the Australian Capital Territory (Discrimination Act 1991) and in the Northern Territory (Anti-Discrimination Act 1992), racial discrimination is unlawful in the areas of education, employment, accommodation, clubs, goods and services and requests for information. The term "race" includes the colour, descent, ethnic or national origin, and nationality of a person. These Acts also make it unlawful to discriminate against a person on the ground that the person has a relative or associate who is of a particular race. Racial vilification is also unlawful in the Australian Capital Territory.

21. Similar legislation exists in New South Wales (Anti-Discrimination Act 1977), and in Victoria (Equal Opportunity Act 1995 and the Racial and Religious Tolerance Act 2001), which also prohibit racial vilification. Racial vilification under the New South Wales and Victoria Acts is any public act that is capable of inciting hatred towards, serious contempt

[2] Australian Human Rights Commission, "Constitutional reform: FAQs — why reform of the Constitution is needed". Available from www.humanrights.gov.au/publications/constitutional-reform-faqs-why-reform-constitution-needed.

for or severe ridicule of a person or a group of persons because of their race. In Victoria, the most serious forms of racial and religious vilification are considered criminal offences.

22. On 12 March 2013, the Aboriginal and Torres Strait Islander Peoples Recognition Act 2013 was passed unopposed by both houses of Parliament. That Act recognizes Aboriginal and Torres Strait Islander peoples as the first people of the land now known as Australia, their continuing relationship with land and waters, and their continuing cultures, languages and heritage.

23. The purpose of that Act was to build momentum for a referendum on constitutional recognition, and initially included a sunset clause of two years. On 20 March 2015, the Act was extended for a further three years until 28 March 2018. In the meantime, the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples tabled its final report and recommendations. One of the recommendations (para. 2.40) was that a referendum on constitutional recognition should be held when it has the highest chance of success. So far, no model for such a referendum has been finalized, nor has a time frame been announced.[3]

IV. Institutional framework for combating racism and discrimination

24. The Special Rapporteur was pleased to note that there are credible and active institutions involved in the fight against racism and discrimination in Australia. In Sydney, he met with the President and Commissioners of the Australian Human Rights Commission — the national human rights institution — where he was able to confirm the exemplary work done by this institution, particularly with respect to racism and racial discrimination. The Commission is a statutory body funded by, but operating independently from, the Government. It has responsibility for investigating alleged infringements of federal anti-discrimination legislation (see paras. 17-19 above). It has jurisdiction to investigate and conciliate complaints of unlawful discrimination under the Age Discrimination Act 2004, the Disability Discrimination Act 1992, the Racial Discrimination Act 1975 and the Sex Discrimination Act 1984, which include discrimination on the grounds of race or nationality, colour or ethnic origin, racial vilification, age, sex or gender, sexual harassment, marital or relationship status, sexual orientation, gender identity, intersex status, care status, actual or potential pregnancy, breastfeeding, trade union activity, criminal record, medical record, impairment or physical disability.[4] It also has jurisdiction to investigate alleged violations of human rights by the Commonwealth and complaints relating to equal opportunity in employment. The Australian Human Rights Commission Regulations 1989 define the grounds for "discrimination" for the purposes of complaints relating to equal opportunity in employment. That definition includes attributes that are not protected under federal anti-discrimination law, such as discrimination on the basis of criminal record. The Commission has consistently been granted "class A" status by the Global Alliance of National Human Rights Institutions in virtue of its full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). The Commission issues an annual report.[5]

25. The Commission is not a judicial body or a tribunal and as such does not make judicial determinations and has no powers of adjudication. Its role is to investigate and conciliate complaints brought to its attention. It is a collegiate body made up of a President and seven Commissioners, among them the Race Discrimination Commissioner and the Aboriginal and Torres Strait Islander Social Justice Commissioner. The Commissioners are also mandated to promote understanding and acceptance of their relevant laws. In 2015/16,

[3] Australian Human Rights Commission, "Factsheet: Aboriginal and Torres Strait Islander Peoples". Available from www.humanrights.gov.au/sites/default/files/5.%20Aboriginal%20and%20Torres%20Strait%20Islander%20peoples%20Final.pdf.

[4] Australian Human Rights Commission Regulations of 1989.

[5] See www.humanrights.gov.au/our-work/commission-general/publications/annual-reports-index.

the Commission received 77 complaints under section 18C of the Racial Discrimination Act 1975 and 52 per cent of those complaints were resolved after conciliation. If conciliation fails, a party can proceed to the Federal Court or Federal Circuit Court. This happens in a very small number of cases. The Special Rapporteur was informed that, in 2015/16, the Commission finalized 86 complaints about racial hatred. Only one complaint about racial hatred proceeded to court. In the event that the court finds a contravention of the Act, it may make orders for an apology or a correction, and/or award monetary damages.

26. The Race Discrimination Commissioner launched a number of initiatives as part of the federal National Anti-Racism Strategy, including the Workplace Cultural Diversity Tool, anti-racism materials for the national curriculum and an online social cohesion resource for local governments.[6] Similarly, the Aboriginal and Torres Strait Islander Social Justice Commissioner is responsible for monitoring the human rights situation of indigenous Australians and producing an annual *Social Justice and Native Title Report*. The Commissioner has been active in the development of resources to help Aboriginal and Torres Strait Islander peoples understand the United Nations Declaration on the Rights of Indigenous Peoples, and the indigenous health campaign "Close the Gap", indigenous property rights, constitutional recognition of indigenous peoples, and the annual *Social Justice and Native Title Report*, the National Congress of Australia's First Peoples and the Northern Territory Emergency Response intervention.[7]

27. The Special Rapporteur was informed that, in recent years, the budget of the Australian Human Rights Commission has been severely reduced for a number of reasons, including but not limited to general budgetary cuts. The core funding of about $A 14 million for all the Commission's activities is allegedly inadequate to respond to the many enquiries and complaints, and a backlog of cases has piled up. The fact that the Commission handles more than 20,000 inquiries and 2,000 complaints each year, the vast majority of which are resolved to the satisfaction of all the parties involved, serves as proof of the smooth operation of this fundamental institution in Australia.

28. The different states and territories have all established their own human rights institutions under their respective legislation. During his visit, the Special Rapporteur interacted with representatives of the Australian Capital Territory Human Rights Commission, the Victorian Equal Opportunity and Human Rights Commission, the Anti-Discrimination Board of New South Wales and the Northern Territory Anti-Discrimination Commission.

29. The Special Rapporteur met the respective Chairs of the Australian Multicultural Council, the Prime Minister's Indigenous Advisory Council and ministerially appointed bodies that provide advice to the Government on multicultural and indigenous issues. The Australian Multicultural Council focuses on harnessing the economic and social benefits of the country's culturally diverse population, celebrating diversity, promoting social acceptance and fostering engagement with Australian values, identity and citizenship, addressing issues of racism and discrimination, and promoting greater intercultural and interfaith understanding and dialogue.[8] The Prime Minister's Indigenous Advisory Council, which provides advice to the Government on indigenous issues, is directly appointed by the Prime Minister. It comprises indigenous and non-indigenous Australians from a range of backgrounds and locations. It decided to focus on the following thematic areas of improvement for indigenous Australians: education, community safety and employment and economic development.[9]

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[6] Australian Human Rights Commission, *Annual Report 2014-2015* (Sydney, 2015), p. 17.

[7] See www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice.

[8] See www.dss.gov.au/our-responsibilities/settlement-and-multicultural-affairs/programs-policy/a-multicultural-australia/australian-multicultural-council.

[9] See Australia, Department of the Prime Minister and Cabinet, "Meeting communique: Indigenous Advisory Council, February 2016". Available from www.dpmc.gov.au/news-centre/indigenous-affairs/meeting-communique-indigenous-advisory-council-february-2016.

30. The Special Rapporteur had the opportunity to meet with the President and Registrar of the National Native Title Tribunal, an independent institution established by the Native Title Act 1993. The Tribunal conducts inquiries, reviews and mediation; assists various parties with agreements to settle applications and to negotiate indigenous land use agreements; and supports representative Aboriginal and Torres Strait Islander bodies in matters related to land issues and titles.[10] The Tribunal is supported by its Registrar, who has a statutory responsibility: to maintain three distinct registers (the National Native Title Register, the Register of Native Title Claims and the Register of Indigenous Land Use Agreements); to assess claimant applications for registration; to give notice of native title applications and indigenous land use agreements; and to formally register such agreements.

31. The Special Rapporteur also met with representatives of Indigenous Business Australia, a government agency established to ensure economic independence for Aboriginal and Torres Strait Islander peoples.[11] Through Indigenous Business Australia, the Government supports indigenous businesses and provides new and existing indigenous business owners with access to expert advice and business finance, with the aim of contributing to the economic independence of Aboriginal and Torres Strait Islander peoples. Indigenous Business Australia also assists indigenous Australians to buy their own homes, own their own businesses and invest in commercial ventures. The investment options developed by Indigenous Business Australia comply with international best practices in their respective areas.[12]

V. Public policies and initiatives to combat racism, racial discrimination, xenophobia and related intolerance

32. In 2011, the Government committed to develop and implement the National Anti-Racism Strategy, which was launched in 2012 and extended for a further three years in 2015. The aim of the Strategy is "to promote a clear understanding in the Australian community of what racism is, and how it can be prevented and reduced". The Strategy focuses on public awareness, education and youth engagement and is underpinned by research, consultation and evaluation. The Strategy established a National Anti-Racism Partnership, led by the Australian Human Rights Commission and comprising the representatives of the Attorney-General's Department, the Department of Social Services, the Department of Human Services, the Department of Immigration and Border Protection, the Australian Multicultural Council, the National Congress of Australia's First Peoples and the Federation of Ethnic Communities' Councils of Australia.

33. The National Anti-Racism Strategy is a two-tier strategy, which includes a nationwide public awareness campaign entitled "Racism. It Stops with Me", to raise awareness and coordinate the efforts of individuals or communities to promote anti-racism initiatives, and empower them to prevent and respond to racism. At the time of the visit, 364 organizations had joined the campaign; which comprised a series of six strategic projects to reinforce existing good practices, encompassing an online anti-racism platform for young people, a training tool on systemic racism against Aboriginal and Torres Strait Islander peoples, a Workplace Cultural Diversity Tool for employers, educational resources addressing racism, a national forum on diversity training for police forces, and a resource for local government on social cohesion.

34. The Special Rapporteur was pleased to note that non-governmental organizations, business groups, employers and sports federations had joined the campaign and had taken steps to combat racism, counter negative stereotypes and open up new opportunities, especially for groups that are traditionally discriminated against.

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[10] National Native Title Tribunal, "Overview of the Tribunal". Available from www.nntt.gov.au/aboutus/Pages/default.aspx.

[11] See www.iba.gov.au.

[12] Australia, "Closing the gap, Prime Minister's report 2015", p. 26. Available from www.dpmc.gov.au/sites/default/files/publications/Closing_the_Gap_2015_Report_0.pdf.

35. The Special Rapporteur was particularly impressed by the work undertaken by the Scanlon Foundation, a non-profit research organization established in 2001, which aims to make Australia a welcoming, prosperous and cohesive nation, particularly in relation to the integration of migrants into Australian society. The Foundation supports ongoing, long-term longitudinal research on indicators of social cohesion. Since 2007, it has published an annual national survey on mapping social cohesion, in conjunction with Andrew Markus of Monash University.

36. Those surveys rely on probability-based methods for surveying the population in order to understand the social impact of the country's increasingly diverse immigration programme, as Australia has been experiencing significant population growth in recent years. The most recent survey,[13] published in 2016, was conducted at a time when a number of political commentators pointed to a shift in public opinion and a revolt against political elites. However, in the 2016 survey, more evidence of stability and social cohesion than of deterioration was found.

37. For example, in the 2016 survey, there were continuing low levels of concern over issues of immigration; just 34 per cent of respondents — the lowest recorded in those surveys — considered that immigration intake was "too high". Similarly, respondents consistently report high levels of agreement with the proposition that "multiculturalism has been good for Australia" — more than 80 per cent in recent surveys. However, one area in which opinion has apparently shifted is in attitudes towards Muslims: it was reported in the 2016 survey that almost half the population would support a ban on Muslim immigration, which the Special Rapporteur found worrying.

38. The Special Rapporteur was thoroughly briefed on the Closing the Gap strategy, which aims to reduce disadvantages among Aboriginal and Torres Strait Islander peoples regarding life expectancy, child mortality, access to early childhood education, educational achievement and employment outcomes. It is a formal commitment made by all (federal, state and territory) governments to achieve equality for Aboriginal and Torres Strait Islander peoples within 25 years. This government strategy was developed in response to the Aboriginal and Torres Strait Islander Social Justice Commissioner's *Social Justice Report 2005* and the Close the Gap campaign. Upon signature of the statement of intent at the Indigenous Health Equality Summit in March 2008, Aboriginal and Torres Strait Islander peoples and the Government of Australia agreed to work together to achieve equality in relation to health status and life expectancy between Aboriginal and Torres Strait Islander peoples and non-indigenous Australians by the year 2030.

39. The Council of Australian Governments has set measurable targets to monitor improvements in the health and well-being of the indigenous population. The targets are the following:

(a) Close the gap in life expectancy within a generation;

(b) Halve the gap in mortality rates for indigenous children under 5 within a decade;

(c) Ensure that all indigenous 4-year-olds in remote communities have access to early childhood education within five years;

(d) Halve the gap for indigenous students in reading, writing and numeracy within a decade;

(e) Halve the gap for indigenous students in year 12 attainment or equivalent attainment rates by 2020;

(f) Halve the gap in employment outcomes between indigenous and non-indigenous Australians within a decade.

40. Every year, the Prime Minister releases a Closing the Gap report to Parliament, which details the progress made in achieving those targets. A report is also released by the

[13] Available from http://scanlonfoundation.org.au/wp-content/uploads/2016/11/2016-Mapping-Social-Cohesion-Report-FINAL-with-covers.pdf.

Close the Gap Campaign Steering Committee that details progress on the two health related targets and provides recommendations to the Government. The Special Rapporteur was informed of the latest report released in 2017,[14] which unfortunately reflects the fact that several targets are not on track for the year in question, in particular those relating to child mortality, life expectancy, employment and reading and numeracy levels. Achieving the objectives of the strategy will require additional efforts by all levels of government to reach the overall targets by their respective due dates.

41. In 2014, the Government of Australia introduced the Indigenous Advancement Strategy, which is now the way in which Government funds and delivers a range of programmes targeting Aboriginal and Torres Strait Islander peoples. The Indigenous Advancement Strategy replaced more than 150 individual programmes and activities with five flexible, broad-based programme streams: jobs, land and economy; children and schooling; safety and well-being; culture and capability; and remote Australia strategies. In the 2015/16 budget, the Government allocated $A 4.9 billion to the strategy over four years to cover the grant funding processes and administered procurement activities set up to achieve its objectives.[15]

42. In addition to the programmes and initiatives set up at the national level, which are designed by the Department of Social Services and implemented by the Department of Human Services, the Special Rapporteur was informed that the different states and territories have also initiated several projects on multiculturalism and advancing indigenous issues. In particular, he was made aware of a series of grants established by the Government of New South Wales for projects and events promoting cultural diversity; it also has a strategy for social housing aimed at accommodating indigenous people. Similarly, the Government of Victoria has launched a strategy aimed at celebrating diversity and promoting social cohesion, which includes a number of initiatives to counter racism and xenophobia and improve recruitment of persons from migrant and indigenous communities in the public sector. The Government of Victoria also has a series of programmes and grants for different community organizations grouped under three main areas: celebrating diversity; social cohesion and participation in public life; and accessible and responsible services. For indigenous persons living in Victoria, the state government has numerous programmes grouped around four main themes: maternal health and early childhood; education and training; health, housing and well-being; and safe families and communities and equitable justice.

VI. Challenges in the fight against racism, racial discrimination, xenophobia and related intolerance

A. Indigenous persons and the justice system

43. The Special Rapporteur was made aware of the challenges of continuing racial discrimination faced by indigenous persons as well as other minority groups. Indigenous persons (Aboriginal and Torres Strait Islander peoples) continue to be incarcerated at a disproportionate rate compared with non-indigenous Australians, a situation that had already been raised by his predecessor during his visit in 2001 (see E/CN.4/2002/24/Add.1, paras. 76-78). Indigenous Australians are not only more likely to be imprisoned than non-indigenous Australians, both adults and youth, but they are also more likely to be the victims of crime, including violent crime. For instance, indigenous Australians are hospitalized for assault at 17 times the rate of non-Indigenous Australians.[16] The Special

[14] Available from http://closingthegap.pmc.gov.au/sites/default/files/ctg-report-2017.pdf.

[15] See www.dpmc.gov.au/indigenous-affairs/indigenous-advancement-strategy.

[16] National Indigenous Law and Justice Framework, 2009-2015, p. 6. Available from www.cabinet.qld.gov.au/documents/2009/sep/scag%20national%20indigenous%20law%20and%20justice%20framework/Attachments/NationalIndigenousLawandJusticeFramework.pdf.

Rapporteur was informed that while indigenous peoples comprise only 2.5 per cent of the country's population, they accounted for over a quarter of the prison population in 2012.[17]

44. More strikingly, indigenous young people were 25 times more likely in 2014 to be in detention than non-indigenous young people. About half (52 per cent) of young people in detention on an average night in June 2014 were indigenous.[18] In Western Australia, indigenous young people make up just 6 per cent of the 10 to 17-year-olds, but more than 75 per cent of those in detention, which means that in that state indigenous young people are 53 times more likely to be in detention.[19] From 2010 to 2014, the overrepresentation of indigenous young people in detention increased from 22 to 25 times the rate of non-indigenous young people, mainly due to a decrease in the rate of the latter in youth detention.[20]

45. Similarly, the incarceration rate of indigenous women is on the rise and they are the most overrepresented population in prison. In 2010, approximately 30 per cent of all incarcerated women in Australia were indigenous, while 24 per cent of all incarcerated men were indigenous. Based on that data, indigenous women are 16 times more likely to be incarcerated than non-indigenous women; likewise, indigenous men are 14 times more likely to be incarcerated than non-indigenous men.[21]

46. The Special Rapporteur notes that two Royal Commissions (one on the protection and detention of children in the Northern Territory and an inquiry by the Australian Law Reform Commission into the incarceration rate of Aboriginal and Torres Strait Islander peoples) have been investigating those issues. He is also aware that justice programmes designed and led by indigenous people that aim at offering alternatives to detention, where available, are important for early intervention, prevention, diversion and support services, but that many of these were struggling because of lack of government support and funding. The Special Rapporteur emphasizes the importance of including indigenous organizations in national strategies such as the National Crime Prevention Framework. The Closing the Gap strategy, which has now been under way for a number of years, sets targets for progress in, among others, indigenous health, employment, education and housing, but not in the criminal justice system. The Special Rapporteur believes that such targets could also be set up in the criminal justice system in order to reverse the inequalities.

47. The Special Rapporteur also notes that the current policing of indigenous communities is too punitive and needs to change urgently as its consequences can only lead to even further devastation for these communities. The techniques that Australia has pioneered in policing non-indigenous sections of the population would need to be harnessed to address the growing crisis of incarceration of indigenous persons.

B. Employment of indigenous persons

48. The Special Rapporteur is concerned about the disparity in employment rates between indigenous and non-indigenous Australians, and the fact that efforts to reduce this disparity have not met their target as mentioned in the latest annual Closing the Gap

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[17] Australia, Senate, Legal and Constitutional Affairs References Committee, "Value of a justice reinvestment approach to criminal justice in Australia" (2013), p. 31. Available from www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/index.

[18] More recent data are not yet available. Australian Institute of Health and Welfare, "Youth detention population in Australia 2014" (Canberra, 2014), p. vii. Available from www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129549675.

[19] Amnesty International Australia, "There is always a brighter future: keeping indigenous kids in the community and out of detention in Western Australia" (Sydney, 2015), p. 2. Available from https://static.amnesty.org.au/wp-content/uploads/2016/09/CIE_WA_summary_lr.pdf?x85233.

[20] See Australian Institute of Health and Welfare, "Youth detention".

[21] Debbie Kilroy, Sisters Inside Inc., "The over-representation of Aboriginal and Torres Strait Islander women in prison". Available from www.sistersinside.com.au/media/Papers/The%20Stringer%20April%202013%20Over%20Representation%20of%20Aboriginal%20Women%20in%20Prison.pdf.

report.[32] Although there are a number of initiatives at all levels of government to increase employment among indigenous peoples, such as indigenous engagement networks, Indigenous Business Australia and indigenous procurement from government agencies, to name but a few, as well as blind recruitment undertaken in some departments and agencies, the fact remains that indigenous Australians are three times more likely to be unemployed than non-indigenous persons. In remote areas, employment is rare and indigenous communities remain peripheral to economic life and benefit little from economic progress and prosperity.

89. In 2012/13, the overall unemployment rate for Aboriginal and Torres Strait Islander peoples of working age was 21 per cent, significantly higher than the general unemployment rate, which was 5 per cent in July 2013.[33] Similarly, indigenous persons were disproportionately represented amongst those accessing income support and welfare payments. While indigenous Australians comprise approximately 2.5 per cent of the population in Australia, they represent 8.8 per cent of those currently receiving the Newstart Allowance, 12.5 per cent of those currently in receipt of the Parenting Payment (sole parent) and 15.9 per cent of those accessing Youth Allowance. All of those payments have been shown to fall below the poverty line.[34] That discrepancy also manifests itself when looking at the median weekly income per household (equalized gross weekly household income), which was $A 465 for indigenous Australians in 2011/12, compared with $A 869 for non-indigenous persons.[35]

C. Education of indigenous persons

90. The Special Rapporteur noted after his visit to a remote indigenous community that the teaching of indigenous subjects, particularly of languages and cultures, remains non-existent or very rare, even at the primary level. Although responsibility for educational curricula rests with the respective state/territory — and the situation can vary greatly from one state/territory to another — the competent authority in each instance should develop appropriate policies to cater to the needs of the indigenous communities they serve.

91. In 2013, it was reported that 74 per cent of indigenous children were enrolled at preschool and 70 per cent at school, compared with 91 per cent and 89 per cent, respectively, for non-indigenous children.[36] Similarly, in 2012/13, just under half (45.7 per cent) of indigenous Australians aged 20 or more had completed Year 12 or successfully completed Certificate III courses or above.[37] Based on age-standardized proportions, indigenous Australians aged 20 or more were around half as likely as non-indigenous persons to have completed Year 12 or successfully completed Certificate III courses or above.[38] Although there has been significant progress in the overall education of indigenous Australians since the 2008 baseline of the Closing the Gap strategy, the Special Rapporteur was informed that the annual target to reduce the disparity in reading, writing and numeracy for indigenous students had not been met in 2017.

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[32] Available from http://closingthegap.pmc.gov.au/sites/default/files/ctg-report-2017.pdf.

[33] Australian labour market statistics and Australia, Steering Committee for the Review of Government Service Provision, "Overcoming indigenous disadvantage: key indicators 2014 — report" (2014). Available from www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/key-indicators-2014#thereport.

[34] Australia, Department of Social Services, "Annual report 2014-2015" (2015). Available from www.dss.gov.au/sites/default/files/documents/07_2016/dss_annual_report_print_version.pdf.

[35] "Overcoming indigenous disadvantage: key indicators 2014 — report" (see footnote 33 above), p. 23.

[36] Ibid., p. 18.

[37] Australian Bureau of Statistics, "Australian Aboriginal and Torres Strait Islander Health Survey: updated results, 2012-13", 6 June 2014. Available from www.abs.gov.au/ausstats/abs@.nsf/mf/4727.0.55.006.

[38] Ibid.

D. Other forms of discrimination

52. The Special Rapporteur was made aware of several incidents of police profiling of indigenous peoples and discrimination in the private sector, especially in the provision of and access to goods and services. He also noticed that, in general, there were very few indigenous police officers and that remote indigenous communities were patrolled by non-indigenous law enforcement officials, who were only integrated to a limited extent in the communities they were intended to serve.

53. The Special Rapporteur was informed that indigenous Australians face racism every day in their interactions with non-indigenous Australians. For instance, the laws concerning alcohol are often implemented in a manner that leaves indigenous people feeling humiliated for being singled out when shopping, or in accessing other services by private providers.

54. Similarly, during his meetings with civil society organizations, he was made aware of several incidents of profiling of members of sub-Saharan African and Arab communities by law enforcement agents. Several incidents have been reported involving young persons from these communities who had been subject to unjustified searches on their way to or from school. As in the case of indigenous communities, he was told that there were very few police officers from migrant communities, although in Victoria, there were efforts to recruit members of these communities as law enforcement officials.

55. Finally, the Special Rapporteur was informed that Australians had differing experiences of discrimination, as it varied considerably by ethnicity: for instance, there is a 60 per cent likelihood of indigenous Australians experiencing discrimination; for persons of African descent, the percentage is higher, at 75 per cent; and in the case of Asians and Muslims, the figure is 30 per cent.[39]

E. Racist hate speech

56. The Special Rapporteur was informed about remarks made by elected politicians concerning newly arrived migrants and, in particular, those against Muslims, which were of particular concern in a country that valued immigration and multiculturalism. While the Prime Minister's recent unequivocal statement against racism — delivered on the anniversary of Australia becoming a party to the International Convention on the Elimination of All Forms of Racial Discrimination — is to be commended, the fact remains that some populist politicians, cheered on by sections of mainstream media, continue to stereotype and fan hostility against certain categories of migrants. In particular, some reports have pointed to an increase in xenophobic hate speech, leading to the creation of a negative perception of migrants, particularly Muslims and persons of African descent, which is most worrisome.

57. The Special Rapporteur emphasizes that the current policy of compulsory detention of asylum seekers arriving by boat at offshore processing centres[40] — combined with the Government's campaign entitled "No way: you will not make Australia home",[41] which included a series of strong messages to discourage persons from arriving by irregular means — also contribute to the negative perception of newly arrived migrants, refugees and asylum seekers and can only further exacerbate the unfortunate incidents described above.

58. The Special Rapporteur heard of the continuing fears, threats and incidents of anti-Semitism faced by members of the Jewish community. The Special Rapporteur believes that it is the responsibility of political leaders to denounce and counter this divisive and racist rhetoric, particularly when made by members of their own political parties. The

[39] Available from http://scanlonfoundation.org.au/wp-content/uploads/2016/11/2016-Mapping-Social-Cohesion-Report-FINAL-web-covers.pdf.

[40] See the report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru (A/HRC/35/25/Add.3).

[41] See www.theguardian.com/world/2014/apr/11/angus-campbell-stars-in-videos-warning-asylum-seekers-not-to-travel-by-boat.

media has a professional, as well as a moral, duty not to descend into racist and xenophobic rhetoric, stereotyping and scapegoating.

59. The Special Rapporteur was also made aware of cyberracism on the Internet and social media platforms. In a study released in 2011, it was reported that around 20 per cent of respondents had experienced some form of racist hate speech, including verbal abuse, name-calling, racial slurs and offensive gestures.[77] In 2012/13, cyberracism represented 40 per cent of the complaints of racial hatred received by the Australian Human Rights Commission.[78] In particular, anti-Muslim hate speech has been on the increase in recent years, especially on social media platforms.[79]

F. Attacks against the Australian Human Rights Commission

60. The Special Rapporteur was informed about the attacks made by some politicians against the Australian Human Rights Commission and, in particular, its President, Gillian Triggs, which are particularly troubling given the prestige and respectability this Commission enjoys internationally. Following the Commission's inquiry into the harm caused by the detention of migrant children, its President has faced public intimidation, questioning her integrity, impartiality and judgment. On several occasions in the recent past, efforts to weaken the financial resources and capacity of the Commission have resulted in budget cuts, which have been amplified by the additional functions assigned to it.

61. For the Special Rapporteur, this situation is even more unacceptable given the fact that Australia sponsored Human Rights Council resolution 27/18 on national institutions for the promotion and protection of human rights, in which the Council states, in paragraph 9, that national human rights institutions and their respective members and staff should not face any form of reprisal or intimidation, including political pressure, physical intimidation, harassment or unjustifiable budgetary limitations, as a result of activities undertaken in accordance with their respective mandates, including when taking up individual cases or when reporting on serious or systematic violations in their countries.

62. The fact that the Commission handles more than 20,000 inquiries and 2,000 complaints each year, the vast majority of which are resolved to the satisfaction of all parties, confirms its exemplary work, particularly with respect to racism and racial discrimination. It should be held up by politicians, as well as journalists, as a good example of the functioning of democratic institutions in Australia.

G. The debate on section 18C of the Racial Discrimination Act 1975

63. During the visit, the debate on whether section 18C of the Racial Discrimination Act 1975 imposes unreasonable restrictions on freedom of expression and should therefore be amended was constantly raised in discussions with civil society organizations, the Australian Human Rights Commission and their state equivalents, and state governments. The Special Rapporteur also discussed the issue with the members of the Parliamentary Joint Committee on Human Rights in Canberra, which was at the time carrying out an inquiry on the issue.

64. The Special Rapporteur recalls that section 18C sets the tone for an open, inclusive and multicultural Australia, which respects and values the diversity of its peoples and

[77] Helen Szoke, Race Discrimination Commissioner, Australian Human Rights Commission, "Racism exists in Australia — are we doing enough to address it?", statement made on 16 February 2012. Available from www.humanrights.gov.au/news/speeches/racism-exists-australia-are-we-doing-enough-address-it.

[78] Australian Human Rights Commission, "Cyber racism", 1 January 201[illegible]. Available from www.humanrights.gov.au/our-work/race-discrimination/projects/cyberracism.

[79] Online Hate Prevention Institute, "Spotlight on anti-Muslim internet ha[illegible]: interim report" (2015). Available from www.ohpi.org.au/documents/2020/11/05/Anti-Muslim-Hate-Online-Interim-Report.

protects indigenous persons and migrants against bigots and extremists, who have become more vocal in the country and other parts of the world. As the Australian Human Rights Commission stated in its submission to the Joint Committee:[15]

> "Racial vilification can harm the freedom of those who are its targets. It can have a silencing effect and can harm the ability of its victims to exercise their freedom of speech, among other freedoms. Legislation that prohibits racial vilification ensures those who experience the harms of racial vilification have access to a legal remedy. Such legislation also sends a strong message about civility, respect and tolerance in a multicultural society. Under international human rights law, and under Australian law, neither freedom of expression nor freedom from racial vilification has been considered an absolute or unfettered right. Each of these freedoms has always been subject to limitations and restrictions. As a result, freedom of expression and freedom from racial vilification can and do co-exist. These two freedoms are also subject to further limitations and restrictions that accommodate other human rights and important interests."

65. The Special Rapporteur was pleased to hear that in its report released on 28 February 2017, the Joint Committee made no recommendations for changing sections 18C and 18D[16] and acknowledged that its members held differing views on how to balance appropriately the right to freedom of speech and the right to protection from serious forms of racially discriminatory speech, and stressed the importance of the rule of law. The Special Rapporteur believes that removing this provision would undermine the efforts undertaken by the various levels of government for an inclusive Australia and may open the door to more racist and xenophobic hate speech, which, although on the increase as seen above, has been somewhat limited thanks to this provision. In his conversations with civil society, community and indigenous organizations and state governments, the Special Rapporteur found unambiguous support for this section of the Racial Discrimination Act 1975. He hopes that the Government will follow the recommendations of the Joint Committee.

VII. Conclusions and recommendations

66. **The Special Rapporteur thanks the Government of Australia and the different state and territorial entities for his successful visit. He noted the commitment of the Government to its policy on multiculturalism. Australia continues to receive a large number of migrants every year under the skilled labour scheme, in which the human rights of migrants need to be further protected. Australia offers resettlement to thousands of recognized refugees from war-torn countries and works with civil society organizations to offer a number of programmes at various levels for their integration. Australia should also work to create an environment of zero tolerance as regards discrimination in order to allow refugees to settle into their new communities as smoothly as possible.**

67. **The Special Rapporteur praises the vibrant civil society and numerous multicultural and ethnic organizations that help migrants and refugees settle in Australia and that provide a wide range of programmes and initiatives of their own.**

68. **The Special Rapporteur recognizes the ongoing discussion and consultations on the constitutional recognition of the place and rights of Aboriginal and Torres Strait Islander peoples. He welcomes the bipartisan commitment of the federal Government**

[15] Australian Human Rights Commission, "Inquiry into freedom of speech: Australian Human Rights Commission submission to the Parliamentary Joint Committee on Human Rights, 9 December 2016", pp. 5-6. Available from www.humanrights.gov.au/submissions/inquiry-freedom-speech.

[16] Australia, Parliamentary Joint Committee on Human Rights, "Inquiry report: freedom of speech in Australia" (Canberra, 2017), which reflects the situation as of February 2017. Available from www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights_Inquiries/FreedomspeechAustralia/Report.

— and the state and territorial governments — to come to an agreement on such constitutional reform in the near future.

69. It is therefore important that the numerous efforts undertaken by all stakeholders, including the different levels of government entities, in combating racism, xenophobia and other forms of discrimination continue, especially during periods of uncertainty and the rise of populist movements and ideas in the global context.

70. In this connection and in a spirit of constructive dialogue, the Special Rapporteur wishes to make the following recommendations:

71. As regards the legal framework, the Special Rapporteur recommends that the Government:

(a) Expedite ratification of the United Nations treaties that are still not ratified; consider, in particular, becoming a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and ratify the ILO Conventions on the protection of migrant workers and on indigenous rights;

(b) Finalize a constitutional amendment in order to recognize the inherent rights and culture of the indigenous peoples of Australia (Aboriginal and Torres Strait Islander peoples) and set up constitutionally protected institutions to protect their ancestral rights and promote their culture and identity;

(c) Seize the opportunity when amending the Constitution to adopt a fundamental bill of rights, with a clause therein to establish its precedence over all other legislation. Such a bill of rights could be invoked by anyone whose rights seem threatened by the decision of any authority, at any time, before any court of law or tribunal, thereby providing protection for all and preventing any form of discrimination.

72. As regards the institutional framework, the Special Rapporteur recommends that the Government:

(a) Provide adequate resources to the Australian Human Rights Commission and its state and territorial counterparts in order for these institutions to be able to continue to carry out their fundamental role in the protection and promotion of human rights; guarantee their independence; and seriously investigate and properly sanction any personal attacks against their officials;

(b) Develop their policies on refugees and asylum seekers in accordance with their human rights and humanitarian obligations;

(c) Continue its commitment to, and funding of, the Closing the Gap strategy so as to end discrimination against indigenous Australians in accordance with the targets set; include administration of justice in those targets, especially in the criminal justice system; and provide more disaggregated data on how the strategy has reduced the inequalities between indigenous Australians and the rest of the population;

(d) Extend the different justice programmes that are designed and led by indigenous persons, including those on restorative justice, by providing adequate support and funding — with the involvement of indigenous organizations — to end the overrepresentation of indigenous Australians in the criminal justice system and to offer alternatives to detention; in this regard, the outcomes of the two Royal Commissions will be important steps, which will require follow-up;

(e) Ensure that law enforcement agencies, in particular police forces, reflect the diversity of Australian society and the communities they serve and increase their intake of recruits from indigenous and minority communities;

(f) Improve the coordination of the numerous programmes and initiatives to combat racism and to support indigenous Australians undertaken at all levels of

government in order to avoid duplication and ensure effective delivery to their intended recipients;

(g) Ensure adequate and constant funding for the numerous community organizations that provide services to migrants, refugees and indigenous communities. Funding should not be linked to partisan politics or subject to removal if criticism is expressed by those organizations, which play a crucial role, notably in successful integration into Australian society.

73. **As regards hate speech, the Special Rapporteur recommends:**

(a) That the highest levels of government and the leadership of all political parties adopt clear, strong and unequivocal positions against racism and racial discrimination, in particular condemning any act or speech against indigenous Australians or persons of African descent, Islamophobia or anti-Semitism;

(b) Continue the different campaigns and initiatives to fight racism, racial discrimination and related intolerance at all levels, with an emphasis on the grass-roots level, in conjunction with the numerous civil society organizations already playing an active role and with proper resources; the successful campaigns on combating racism in sports could serve as examples of good practice in this respect;

(c) That the media refrain from xenophobic stereotyping, scapegoating and racist remarks. Those acts should be duly investigated and prosecuted and the media and journalists should adopt a code of good conduct containing provisions against racism and xenophobia. The Special Rapporteur recalls that the media has a fundamental role to play in the fight against racism, xenophobia and other forms of discrimination; in this regard, it should reflect the composition of Australian society and include more persons from indigenous and minority communities;

(d) That the different levels of government, together with civil society, Internet providers and social media platforms, establish a plan of action in order to combat online racism and hate speech. In that regard, positive initiatives underlined in his report of 2014 to the Human Rights Council (A/HRC/26/49), which balance the right to freedom of expression and the right to protection against racism and hate speech, could serve as examples;

(e) That the provision (section 18C) of the Racial Discrimination Act 1975 that provides protection against racist hate speech and racial vilification remains in force in order to continue to protect victims of racist hate speech in a multicultural Australia.

74. **The Special Rapporteur also recommends that:**

(a) Employers consider the possibility of resorting to blind recruitment in order to improve the employment rate for indigenous Australians and members of migrant communities, and to attract the most qualified persons for a specific post;

(b) Given that Australia has been a country of immigration for the last two hundred years, receiving waves of migrants from different parts of the world who have greatly contributed to the development of its society, all Australians should therefore recognize the unique opportunity provided by migration and celebrate the country's diversity and multiculturalism.